IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMONS FOR JUDGMENT NO.201 OF 2007
IN
SUMMARY SUIT NO.437 OF 2007

Bharti Tele-Ventures Ltd. ...Plaintiff.
Vs.
Mrs.G. C. Maghnani & Anr. ...Defendants.
....
Mr.Sharan Jagtyani i/b. D.H. Law Associate for the Plaintiff.
Mr.V. M. Talreja for the Defendants.
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CORAM :DR.D.Y.CHANDRACHUD, J.
11th June 2007.

P.C.:

A leave and licence agreement was entered into between the parties on 9th November 2001 in respect of a residential flat. The term of the licence was 22 months commencing from 9th November 2001. Under clause 17, neither the licensor nor the licensee could terminate the licence for the first eleven months. Upon the expiry of that period, however, a termination could be effected with a notice of two months. The licence provided for a security deposit of Rs.50 lakhs. Under clause 18, the security deposit was to be refunded by the licensor simultaneously against the handing over of vacant

possession by the licensee failing which, the licensee was entitled to retain the premises without occupation charges and to receive interest at the rate of 18% per annum from the date on which the licensee would be willing to vacate.

After the expiry of a period of eleven months, the Plaintiff as licensee issued a letter of termination of 19th December 2002. By the letter, the licence was terminated with effect from 18th February 2003 and the Plaintiff expressed its readiness and willingness to hand over possession. The Defendants were called upon to refund the security deposit. The Defendants paid an amount of Rs.25 lakhs on 7th February 2003 and Rs.20 lakhs on 22nd March 2003 after which no payments were made.

On 26th May 2004, an agreement was arrived at between the parties. As on the date of the agreement a balance of Rs.5 lakhs was payable on account of the unrefunded security deposit. Parties agreed that the Defendants would pay to the Plaintiff an amount of Rs.4 lakhs in full and final satisfaction of the claim for the balance, of

which an amount of Rs.3 lakhs was to be paid immediately and a further amount of Rs. 1 lakh on or before 25th June 2004. The amount of Rs.3 lakhs was paid but the balance of Rs.1 lakh was not. Eventually, the Plaintiff instituted a suit for the recovery of its dues under Order 37 Rule 1 of the Code of Civil Procedure, 1908, upon the foundation of a written contract between the parties.

On behalf of the Plaintiff, it has been submitted that while the agreement dated 26th May 2004 contemplated that the Plaintiff would receive an amount of Rs.4 lakhs in full and final satisfaction of the outstandings, that was on the premise that the entire payment was liable to be made on or before 25th June 2004. Since the Defendants have failed to abide by the terms of the agreement, the Plaintiff has claimed the entire outstanding balance of Rs.2 lakhs on account of security deposit together with interest at the rate of 18% per annum as contemplated by Clause 18 of the licence agreement.

On behalf of the Defendants, it has been submitted that the Plaintiff is entitled to only the balance of Rs.1 lakh together with

interest and that the flat was not returned in a proper condition of repair.

There is absolutely no merit in the contention that the flat was not returned in a proper condition of repair. Counsel appearing on behalf of the Defendants has on instructions stated that possession was handed over in February 2003. No dispute about the flat or of the condition of the flat was raised at that time or even before the agreement that was entered into on 26th May 2004. The agreement dated 26th May 2004 contemplated a concession in the repayment of the outstanding balance of the security deposit of Rs.5 lakhs, but this was obviously on the basis that the entire amount of Rs.4 lakhs would be paid on or before 25th June 2004. The Plaintiff admittedly did not receive the entire balance. In these circumstances, I am of the view that while the interests of justice would require that the Defendants ought not to be deprived of an opportunity of defending the suit, there should be a condition of deposit. The claim of the Plaintiff, even if the defence before the Court is to be accepted will have to be allowed for the refund of Rs.1 lakh together with

interest, though as already noted earlier, the Plaintiff hasclaimed the entire balance on account of security deposit of Rs.2 lakhs with interest. In my view, the ends of justice would be served by directing that the Defendants shall be entitled to leave to defend the suit, conditional on a deposit of an amount of Rs.2 lakhs within a period of four weeks from today. Upon deposit, the Plaintiff would be at liberty to withdraw the amount, subject to furnishing security to the satisfaction of the Prothonotary and Senior Master. Upon deposit, a Written Statement shall be filed within a period of 8 weeks.

The Summons for Judgment is accordingly disposed of.

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